IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 469 of 2004 (S/S)
(Old No. 3572 of 1991)

Sachida Nand Juyal
S/o Sri Daulat Ram Juyal
At present posted as Junior Clerk
In the office of Executive Engineer
Irrigation Construction Division
Srinagar, District Garhwal ……..Petitioner

Versus

1. State of U.P.
   through the Secretary
   Department of Irrigation
   Civil Secretariat, Lucknow.
2. Engineer-in-Chief
   Adhisthan-4-Ka-Anubhag
   Irrigation Department
   Lucknow.
3. Superintending Engineer
   Irrigation Works Circle, Lansdowne
   District Garhwal.
4. Executive Engineer
   Irrigation Construction Division
   Srinagar
   District Pauri Garhwal. ….Respondents

Shri Manoj Tiwari, learned counsel for the petitioner.
Shri H.M. Raturi, learned standing counsel for the respondents.

Hon'ble Prafulla C. Pant, J

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has challenged the order dated 11.01.1990, whereby it is directed that the promotions given to certain Junior Clerks w.e.f. 01.09.1983, on representation of certain allegedly senior employees to them, be undone and they be reverted back to the post of Junior Clerks. The

consequential order (Annexure-4 to the writ petition), passed by Executive Engineer, Irrigation Department, is also challenged in the writ petition.

2. Heard learned counsel for the parties.

3. Brief facts of the case are that petitioner was appointed as Junior Clerk w.e.f. 26.12.1978 in the officer of Superintending Engineer, Lansdowne, Garhwal, in the year 1978. He was promoted to the post of Senior Clerk w.e.f. 01.09.1983. It is further stated in the writ petition that all the Junior Clerks mentioned in seniority list at serial No. 1 to 1250, were promoted as Senior Clerks. The petitioner stood in said seniority list at serial No. 1172. The petitioner was promoted after he was considered on the criteria of seniority subject to rejection of unfit. However, it is alleged that without affording any opportunity of hearing, the petitioner along with some other clerks was reverted as Junior Clerk, purporting on the ground that some persons made representation, claiming senior to the petitioner and others who were reverted back as Junior Clerks. It is further alleged in the writ petition that a representation was made by the petitioner but the same was not considered by the authorities. Challenging the impugned order of reversion, it is stated that after completing seven years as Senior Clerk, the petitioner could not have been reverted back arbitrarily without affording any opportunity of being heard and as such, the impugned order is

liable to be quashed, being arbitrary and in violation of principles of natural justice. (This writ petition was filed before Lucknow Bench of Allahabad High Court in the year 1991 and the same is received by this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal).

4. A counter affidavit has been filed on behalf of respondents No. 3 and 4 in which it is stated that a gradation list was prepared of the Junior Clerks and the same was circulated vide letter No. 1379/E 4 Ka, dated 20.05.1986. It is admitted that it was proposed that employees from serial No. 1 to 1250 in seniority list be promoted as Senior Clerks. It is also admitted that petitioner was one of the promotees, as he figured at serial No. 1172. It is further sated in the counter affidavit that several representations were received from certain Junior Clerks, who pointed out errors in the seniority list. Consequently, a letter No. 10011/E. 4 Ka/90 Mis./Junior Clerk /88 dated 30.12.1988 seniority list was issued, wherein the petitioner named figured at serial No. 123 as per the amended seniority list of 1250 Junior Clerks, allegedly entitled to promotion by the respondents. It is further stated in the counter affidavit that vide order dated 31.08.1998, during the pendency of this writ petition, the petitioner has now been promoted as Senior Clerk as per the amended seniority list. It is further stated in the counter affidavit that no salary, which was received as Senior Clerk by the

petitioner was directed to be recovered till the date he worked on said post. Defending the impugned orders dated 11.01.1990 and 20.06.1990, it is stated that the same were passed in the administrative exigencies.

5. In the rejoinder affidavit, the petitioner has stated that while the petitioner was deprived of his promotion but the two namely Nand Ram Mamgain and Nain Singh Panwar, who were still junior to the petitioner, were allowed to continue as Senior Clerk. With regard to this fact in the supplementary counter affidavit, filed on behalf of respondents No. 4 and 5, it is stated that consequent to the interim orders, passed by the Allahabad High Court, some persons continued as Senior Clerk but the same status cannot be claimed by the petitioner on the ground of parity, as there was no interim order, passed in this writ petition.

6. Having heard learned counsel for the petitioner and learned standing counsel, this Court does find force in the submission of learned counsel for the petitioner to the extent that principles of natural justice are not followed and it appears that opportunity to explain his position was not given to the petitioner before the impugned order of reversion was passed against him. The impugned order dated 20.06.1990, whereby the petitioner was reverted simply refers the order 11.01.1990,passed by Engineer-in-Chief, Irrigation

on the basis of which the petitioner was reverted back as a Junior Clerk. The order dated 11.01.1990 (copy Annexure-7 to the writ petition), reads as under:-

''कार्यालय प्रमुख अभियन्ता,
{अधिष्ठान–4क–अनुभाग }
सिंचाई विभाग उत्तर प्रदेश।

संख्याः– 2417/ई–4क/4बी–926 सी/खण्ड उ/ पुनरीक्षित वेतनमान लखनऊ

विषय :– खण्डीय लिपिकों को पदनाम/वेतनमान दिया जाना।

समस्त निदेश/अधीक्षण अभियन्ता, सिचाई विभाग उत्तर प्रदेश।

कृपया इस कार्यालय के ज्ञाप सं0 1011/ई–4क/90 मिस/क0 लि0/ब0स0/88, दिनांक 30–12–88 एवं ज्ञाप सं0 10117 ई–4क/5वी–925वी–2/खण्ड/दिनांक 24–12–88 का अवलोकन करें, जिसके द्वारा क्रमशः खंण्डीय कनिष्ठ वरिष्ठ लिपिकों की वरिष्ठता सूचियां निर्गत की गई है।

इस सम्बन्ध में अवगत कराना है कि वरिष्ठ लिपिकों की उक्त वरिष्ठता सूची में कुछ नये उन कनिष्ठ लिपिकों के नाम शामिल किये गये है, जिनके नाम पूर्व में प्रकाशित वरिष्ठता सूची में शामिल होने से छूट गये थे। इसके परिणाम स्वरूप इनसे कनिष्ठ वरिष्ठ लिपिकों के नाम इस सूची में निकाल कर उक्त कनिष्ठ लिपिकों की वरिष्ठता सूची में कुठ और नये कर्मचारियों के नाम भामिल किये गये है जो पहले शामिल होने से छूट गये थे।

वरिष्ठ लिपिकों की उक्त वरिष्ठता सूची में सम्मिलित किये गये कनिष्ठ लिपिकों को वरिष्ठ लिपिक का पद नाम एवं वेतनमान स्वीकृत करने की तिथि एवं इसके फलस्वरूप प्रत्यावर्तित वरिष्ठ लिपिकों की कनिष्ठ लिपिकों का पदनाम वेतनमान स्वीकृत करेन की तिथि निर्धारित करने के प्रकरण इस कार्यालय में विचार हेतु विभिन्न निदेशालयों/मंण्डलों के माध्यम से प्राप्त हुये है। इस समस्त प्रकरणों पर सम्यक रूप से विचारोपरान्त अभी तक अधीक्षण अभियन्ता निदेशकों द्वारा वरिष्ठ लिपिकों का पदनाम/वेतनमान स्वीकृत करने के समस्त आदेशों को अतिक्रमित करते हुए एमद्वारा निम्न आदेश निर्गत किये जाते है।

1. इस कार्यालय के पत्रांक 7277/ई–4क/5वी–926सी/ /खंण्ड, दिनांक 5.12.83 में विहित प्रतिबंधों के अन्तर्गत वरिष्ठ लिपिकों की उक्त वरिष्ठता सूची में सम्मिलित किये गये नये कनिष्ठ लिपिकों को दिनांक 1.9.83 से वरिष्ठ लिपिक का पदनाम/वेतनमान स्वीकृत कर दिया जाये परन्तु उसमें स्पष्ट रूप से यह अंकित कर दिया जाय कि इन्हें वरिष्ठ लिपिक के वेतन का भुगतान वरिष्ठ लिपिक की उक्त वरिष्ठता सूची की निर्गमन की तिथि दिनांक 24.12.88 से देय होगा और शेष अवधि दिनांक 1.9.83 से 23.12.88 तक के वरिष्ठ लिपिकों के वेतन का भुगतान देय नहीं होगा। इन्हें वरिष्ठ लिपिक के नये वेतनमान निर्धारित करते समय वरिष्ठ लिपिक की पिछली अवधि 1.9.83 से 23.12.88 तक की गणना वेतन निर्धारण में की जायेगी ताकि वर्तमान में आने में अपने से कनिष्ठ वरिष्ठ लिपिकों से कम वेतन प्राप्त न हो सकें।

2. कनिष्ठ लिपिकों की उक्त वरिष्ठता सूची में सम्मिलित किये गये लिपिक जो पूर्व वरिष्ठ लिपिकों को दिनांक 24.12.88 से कनिष्ठ लिपिक का पद नाम एवं वेतनमान दिया जाये और उक्त तिथि से पूर्व के {दिनांक अर्थात 1.9.83 से 23.12. 88 तक} वरिष्ठ लिपिक की अवधि के किये गये वेतन भुगतान की वसूली उनके वेतन से न की जाय।

निदेशक/अधीक्षण अभियन्ता उक्त लिपिकों के पदनाम/वेतनमान के संबंध में उपरोक्त इस कार्याल के पत्रांक 7277/ई–4ब, दिनांक 5.12.83 में अंकित प्रतिगंधो को दृष्टगत रखते हुए औपचारिक आदेश शीघ्र निर्गत करने की कृपा करें और आदेशों की एक प्रति इस कार्यालय को भेजना सुनिश्चित करे।

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7. The afore mentioned order does not show representation of which of the Junior Clerks was allowed as against the petitioner and what was their actual position vis-à-vis the petitioner. The order of promotion, a copy of which is annexure – 2 to the writ petition, shows that the petitioner worked as Senior Clerk from 01.01.1987 and he was given pay scale of Senior Clerk w.e.f. 01.09.1983. The said order does not show that the promotion of the petitioner was adhoc or subject to the correction of seniority list. In such circumstances, the principles of natural justice should have been followed before

reverting back the petitioner as Junior Clerk. From the papers on record, it is also clear that no orders have been passed by the respondents on the representation dated 31.05.1991, made by the petitioner, a copy of which is annexure-8 to the writ petition.

8. In the circumstances, this writ petition is disposed of with the direction that the impugned orders are quashed to the extent it affects the promotion given to the petitioner vide annexure-2 to the writ petition. However, it is left open to the respondents and their counter parts in the State of Uttarakhand to pass fresh orders after following principles of natural justice and by giving opportunity to the petitioner explaining his position. The payment of balance amount of salary as Senior Clerk from January 1990 to 1998, shall be subject to the fresh decision taken by the respondents, which shall be taken within six months of production of certified copy of this order before authority concerned.

Dt. 11.09.2007 **(Prafulla C. Pant, J.)**
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